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In the United States Patent and Trademark Office

Appn. Number: 09/641,410
Appn. Filed: August 18, 2000
Applicant: Alice Mary O'Donnell Kiely
Title: Edible Supports for Comestibles with Optional, Edible Mess Guards and Drip Guards
Examiner/GAU: Keith Hendricks/Joyti Chawla 1794

Yorktown Heights, NY September 10, 2010

PETITION TO DIRECTOR UNDER 37 CFR 1.181(a)
Request for Reconsideration of the Holding of Abandonment

Assistant Commissioner for Patents
Arlington, Virginia 22313

Sir:

Applicant respectfully requests reconsideration of the holding of abandonment for the above application of 09/641,410, Edible Supports for Comestibles with Optional, Edible Mess Guards and Drip Guards.

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Request for Reconsideration of the Holding of Abandonment

The entirety of the Petition to Withdraw the Holding of Abandonment of March 29, 2010 is incorporated into this document by way of reference.

This correspondence is in regard to U.S. Patent Application SR Number 09/641,410, Edible Supports for Comestibles with Optional, Edible Mess Guards and Drip Guards. Application 09/641,410 is a parent application to several divisional applications. Patent Application SR No. 09/641,410 was filed August 18, 2000, and is currently pending.

Claims 383 - 416 are pending and examined in the current application. Claims 403 - 416 are withdrawn from consideration as being directed to a non-elected invention.

Applicant had sent a petition to the Director of Patents for the Withdrawal of the Holding of Abandonment under 37 CFR 1.181(a) for the above application on March 27, 2010, since the Final Office Action was premature and improper. Applicant is now in receipt of a recent decision regarding the this petition. This petition has been denied.

Applicant respectfully requests reconsideration and withdrawal of the finality of the Office Action and thus the withdrawal of the holding of abandonment.

The Director's Reason for Denial of the Holding of Abandonment

Page 2 of the Decision on the Petition stated the reason for the denial of the Petition. The reason stated:

“A review of the record indicates that the amendment filed by Applicant necessitated the new ground(s) of rejection presented in the Office Action. The finality of the Office Action was not premature or improper. Because the finality is proper, the holding of

abandonment is maintained and not withdrawn.”

DECISION

The petition is **DENIED**.

Final Office Action Rejection of claims 403 - 416

The Final Office Action of July 9, 2009 stated:

Newly submitted claims 403-416 are directed to a method of making a support, i.e., an invention that is independent or distinct from the invention elected in response filed January 18, 2003 to the original restriction requirement.

Since applicant had elected a product and not the method of making in response to the election requirement the method of making the product, i.e., claims 403-416 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP section 821.03. Thus claims 403-416 will not be examined in the present office action.

Thus, claims 383-402 directed to the product, i.e., elected invention, will be examined in the present application. (Page 2)

Applicant's amendment necessitated the new grounds of rejection presented in the Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP section 706.07(a). (Conclusion)

Election of Species

On January 18, 2003, Applicant responded to the restriction requirement of 12/19/2002 by electing a species. (Attachment A - pages 1/3 - 3/3)

Restriction/Election

As above, the Final Office Action stated:

Newly submitted claims 403-416 are directed to a method of making a support, i.e., an invention that is independent or distinct from the invention elected in response filed January 18, 2003 to the original restriction requirement.

Since applicant had elected a product and not the method of making in response to the election requirement the method of making the product, i.e., claims 403-416 are withdrawn from consideration as being directed to a non-elected invention.

In response:

Applicant disagrees that the amendment filed by Applicant necessitated the new grounds of rejection presented in the Final Office Action. Applicant respectfully maintains that claims 403 - 416 are not directed to an invention that is independent or distinct than the species elected, but are directed to the same species.

MPEP 803 Restriction When Proper

II Guidelines

Examiner must provide reasons or examples of conclusions but need not cite documents to support the requirement in most cases.

CRITERIA FOR RESTRICTION BETWEEN PATENTABLY DISTINCT INVENTIONS

There are two criteria for a proper requirement for restriction between patentably distinct inventions:

- (A) the inventions must be independent (see MPEP section 802.01, section 806.06, 808.01) or distinct as claimed (see MPEP section 806.05 - 806.05(j) and
- (B) There would be a serious burden on the examiner if restriction is not required (see MPEP

section 803.02, section 808, and section 808.02)

In the restriction in the Final Office Action, as above, a reason stating how the inventions as claimed are independent (please see MPEP section 802.01, section 806.06, section 808.01), or distinct (please see MPEP section 806.05 - section 806.05(j) or that there would be a serious burden on examiner if restriction is not required (please see MPEP section 803.02, and section 808.02) had not been stated. (MPEP 803 Restriction when proper)

Where an application contains claims to a product, claims for a process specially adapted for (i.e. not patentably distinct from) as defined in MPEP section 806.05(f) making the product, and claims to a process of using a product, applicant may be required to elect either (A) the product and process of making it; or (B) the process of using. If the examiner cannot make a showing of distinctness between the process of using and the product (please see MPEP section 806.05(h)), restriction cannot be required. (806.05 (i) Product, Process of Making, and Process of Using) (37 CFR 1.141)

Applicant respectfully submits that in the absence of such a reason, or example, of independent inventions or distinct inventions, or a specific example or reason why it would be a burden on examiner if restriction is not required, as above, that the withdrawal of Applicant's claims 403 - 416 from consideration was clearly improper. Thus the finality of the Office Action was premature and improper under (MPEP 806.05(i) 37 CFR 1.141. Applicant respectfully requests that the finality of the Office Action be withdrawn.

Amendments to Specification

With regard to the amendments to the specification, Applicant had disagreed to the objection of the amendments to the specification. Applicant had stated that evidence had been supplied that original claims 6, 19, 21-23 recited a "composite material," and is not new matter. (MPEP

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608.01[(1)] Original Claims). In addition, Applicant's specification as a whole describes an edible composite material, such as the examples of Milky Way (tm), Snickers (tm), Twix (tm), Kit Kat (tm), Kudos (tm), etc., which enables any person skilled in the art to which it pertains as comprising an edible composite material and should be allowed, in accordance with 35 USC 112 Specification.

Although Examiner had sent a response in the Final Office Action, i.e. Response to Arguments, pages 11-14, as stated in the response to the Petition to the Director, this response did not answer Applicant's argument that the term "composite material" was present in original claims 6, 19, 21-23 and should be allowed under 608.01 [(1)] Original Claims, or that the specification related a "composite material" enabled to one having ordinary skill in the art, as above, and should be allowed. 35 USC Section 112, (Please see - Final Office Action - Response to Arguments, Amendment B (4 pages), page 12, i.e. - No response was given to Applicant's argument.)

For this additional reason, Applicant respectfully submits that the finality of the Office Action was premature and improper under (MPEP 707.07(f) Answer all Material Traversed) and respectfully requests removal of the finality of the Office Action, and thus the abandonment.

35 USC Section 112

As noted in Applicant's petition to the Director and in responses to the Office Actions, Applicant had disagreed with the rejection of section 112 and stated that the term "composite material" is a well known term to the public and to a person skilled in the art to which it pertains, and it is not required for Applicant to make and/or use a "composite material."

Applicant argued that the term "composite material" was not new matter as it was in fact

disclosed in the original disclosure in original claims 6, 19, 21-23. (MPEP 608.01(I) Original Claims)

Although Examiner had sent a response to Applicant, as above, the response did not take note of Applicant's arguments or answer the substance of them, such as those stated directly above. (MPEP 707.07(f) Answer all Material Traversed) (please see Final Office Action, Response to Arguments - regarding section 112, page 12 (I) i.e. no response had been given to Applicant's arguments)

Applicant additionally submits that the finality of the Office Action was thus premature and improper, as the substance of Applicant's arguments with regard to section 112 was not noted or answered, MPEP 707.07(f). Applicant thus respectfully requests that the finality of the Office Action be withdrawn.

35 USC Section 102

In response to the non- final Office Action, Applicant had argued that Musher (US 2,217,700) did not anticipate Applicant's claims, as Musher did not show a composite material, as the unit structure of Musher was comprised largely of interstices to hold ice cream, was not a solid material, never was a solid material, and thus did not show a composite material. (Attachment C - paragraph 4)

This argument also was not noted or answered, (MPEP 707.07(f) Answer all Material Traversed) and thus the finality of the Office Action was premature, improper and should be withdrawn. (Please see Response to Arguments page 12 (II) through page 13(d), i. e. no response to this argument).

Furthermore, Applicant respectfully submits that the finality of the Office Action is also improper, as while the Office Action(s) agrees that all elements in Applicant's claims are NOT anticipated by a single reference (Office Action admits that the support of the single reference to Musher is *entirely frozen* [Applicant's is non frozen]) the reference has not been withdrawn. (35 USC Section 102.)

(Please see Response to Arguments - page 13 (d) ... "Thus the composite support for a frozen confection as taught by Musher is not-frozen until the ice cream material is poured into the voids and the entire structure is frozen.

N. B. Examiner agrees the support of Musher is entirely frozen. (Applicant's support is not frozen) Thus, Musher does not anticipate any of Applicant's claims. Since Examiner agrees that Musher does not anticipate Applicant's claims under 35 USC Section 102, and the rejection was not removed, the Office Action was improper. Thus the finality of Office Action was premature.

Reference to Feybusch:

Applicant's argument of how the structure of Feybusch (US 1,638,4880) does not anticipate Applicant's claims since it is not a solid or a composite material, as it requires crevices to drain melting ice cream away from a user's hand when it is being eaten, had not been noted or answered. (MPEP 707.07(f) Answer all Material Traversed) (Attachment C - paragraph 5) (See Response to Arguments page 13, III, i.e. no response to Applicant's argument)

Applicant's argument of how the structure of Feybusch does not show a material that comprises two materials, as each of the materials of Feybusch shows only raw ingredients, had not been answered. (See response to Applicant's Arguments page 13, III) (MPEP 707.07(f) Answer all

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Material Traversed)

Applicant respectfully submits that the finality of the Office Action was thus premature and improper, as the substance of Applicant's arguments with regard to Feybusch under section 102, as well, were not considered or answered. Applicant respectfully submits that the Final Office Action was premature and improper under MPEP 707.07(f) for these additional reasons and respectfully requests that the finality of the Office Action be withdrawn.

Reference to Lane

Section 706.07(a) of the MPEP specifies the conditions under which the finality of a second or subsequent Office Action is proper, providing that:

“Furthermore a second or subsequent action on the merits in any application or patent undergoing reexamination proceedings will not be made final if it includes a rejection on newly recited art, other than information submitted in an information disclosure statement filed under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) of any claim not amended by applicant or patent owner in spite of the fact that other claims might have been amended to require newly required art.”

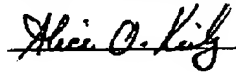
Thus, Applicant respectfully submits that since claim 391 had not been amended, the new reference to Lane (US 1,690,984) was not necessitated by Applicant and was improper. Thus the finality of the Office Action was premature and therefore improper.

Conclusion

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In view of the foregoing, Applicants respectfully requests withdrawal of the finality of the Office Action of 7/9/2009, and thus the withdrawal of the holding of abandonment for the above application. Applicants also respectfully requests that Applicant's claims 403 - 416 be rejoined and considered, and further requests that a new non-final Office Action be sent to Applicant. Applicant is appreciative of this reconsideration by Director.

Very Respectfully,



Alice O. Kiely

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Yorktown Heights, NY 10598

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Certificate of Facsimile: I certify that on the date below, this document and referenced attachments, if any, will be faxed to the central fax number of 571-273-8300 to the United States Patent and Trademark Office "Commissioner for Patents" Arlington, Virginia 22313.

2010 September 10,



Alice O. Kiely

Attachments:

Attachment A: Election of Species, January 18, 2003, 3 pages

Attachment B: Examiner's Response to Arguments, 4 pages

Attachment C: Musher and Feybusch Arguments

Attachment A 1/3

12/19/2002/Restriction

SEP 10 2010



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/641,410	08/18/2000	Alice Mary O'Donnell-Kiely		7256

7590 12/19/2002
Alice O Kiely
71 Stonewall Court
Yorktown Heights, NY 10598-1819

EXAMINER

WEINSTEIN, STEVEN L

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 12/19/2002

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Attachment (A) pg 2/3 12/19/2002 Restriction SEP 10 2010

Office Action Summary	Application No. 09/1641410	Applicant(s) KIELY	
	Examiner S. WEINSTEIN	Group Art Unit 1761	

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SDX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SDX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

☒ Responsive to communication(s) filed on 6/5/02

☐ This action is FINAL

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 30-71 is/are pending in the application.

☐ Of the above claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☐ Claim(s) _____ is/are rejected.

☐ Claim(s) _____ is/are objected to.

☒ Claim(s) 30-71 are subject to restriction or election requirement

Application Papers

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☐ All ☐ Some* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. _____

☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Notice of Reference(s) Cited, PTO-892

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Interview Summary, PTO-413

☐ Notice of Informal Patent Application, PTO-152

☐ Other _____

Office Action Summary

Patent and Trademark Office
Rev. 11/00Part of Paper No. 9
U.S. GPO: 2000-472-939/43204

Attachment (A) pg. 3/3 12/19/2002 Restriction

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Page 2

Art Unit: 1714

↓ For the record, applicant has not specifically addressed the election of species set forth in the Office action mailed 5/2/02, paper no. 7. Ordinarily, applicant is required to elect one or more species. There is no statement that an election was not made since the amendment presents a group of claims to which the election is no longer relevant. However, this does seem to be the case.

In view of the presentation of the new set of claims in the amendment filed 6/5/02, paper no. 8, the election in paper no. 7 is withdrawn in favor of the following new election:

This application contains claims directed to the following patentably distinct species of the claimed invention:

Species I, wherein the comestible has a support as shown e.g. in Fig 1, or

Species II, wherein the comestible has a plurality of supports as shown e.g. in Fig 35-39,

and

Further, election is also required between

Species III, wherein the support is a composite support, as shown e.g. in Fig 1, or

Species IV, wherein the support is a homogeneous support as shown e.g. in Fig 3

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for

prosecution on the merits to which the claims shall be restricted if no generic claim is finally

↑ held to be allowable. Currently, no claim is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election

Attachment B 1/4

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Art Unit: 1794

(A) Claim 391 is rejected under 35 U.S.C. 103(a) as being unpatentable over Feybusch in view of Lane et al (US 1690984), hereinafter Lane.

Regarding the limitation of "wherein one of the two constituent materials comprises an edible hollow confection length, wherein the other of the said two constituent materials comprises an edible filling placed in said hollow length" as recited in claim 391. Feybusch teaches of a composite support for frozen confection (See figures 1 and 2 of Feybusch). The reference however, is silent as to having one of the two constituent materials comprises an edible hollow confection length, wherein the other of the said two constituent materials comprises an edible filling placed in said hollow length, as recited in claim 391. However, support for the frozen confections, wherein one material creates a hollow area which is filled with the other component was well known in the art at the time of the invention. For example Lane teaches of support for a frozen confection comprising of two layers of confection (See items 10 and 11 of Figure 3 of Lane and Page 1, lines 26-34), which have space in between the layers (Item 12, Figure 3 and Page 1, lines 30-33), the space 12 can receive icing, filling of sweetened cream or other confection (Page 1, lines 30-34). Thus, edible support for frozen confections with one material forming a hollow space and the other confection forming the filling as taught by Lane was well known at the time of the invention. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Feybusch based on the teachings from Lane and make the edible support comprising one material that has hollow confection length and another component that comprises a filling placed in said hollow length (Lane Page 1, lines 26-34). One of ordinary skill would have been motivated to modify Feybusch at least for the purpose of rendering the edible support more desirable and tasty (Lane, Page 1, lines 9-14).

Claim 391, is unpatentable over Feybusch in view of Lane.

Response to Arguments



Attachment B 2/4

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Applicant's submission of Jan 16, 2009 and March 16, 2009, cancelling all the claims examined in the previous non-final office action and adding all new claims 383-416 have been considered. Claims 383-402 have been examined above and claims 403-416 have been withdrawn from consideration as being directed to a non-elected invention.

Applicant's remarks are addressed to the new claims, which have been rejected above and thus are moot in view of the new grounds of rejection.

→ (I) Regarding the support for the terms rejected under 35 U.S.C. 112, applicant has presented no comments and although the applicant has removed the rejected claims, the newly added claims continue to be unclear for the reasons of record. For expediting the prosecution in future, the applicant is requested to provide support in the original disclosure of the present application for future reference.

→ (II) Applicant's remarks regarding Musher have been fully considered but are not persuasive. Applicant's remarks have also been responded in previous office action dated April, 30, 2008.

a) Specifically regarding Musher not teaching a two ingredient support (Remarks, page 36), applicant is referred to the claim as recited "support....comprising two edible ingredient materials", the term comprising is open ended and does not convey that the support have only two edible ingredient materials. Further since the applicant has failed to show how the two ingredient materials are different from an ingredient in the support as stated in claims, therefore it is unclear as to what constitutes an ingredient or an ingredient material as recited. Also see the rejection of claims under 35 USC 112 above. Further, it is noted that the applicant also states "Musher's composite support structure is made up of plurality of edible ...components" (Remarks, page 36-37) and "each of the framework structures are bonded together to make the framework structure" (Remarks, page 9, paragraph following Example V of 1/28/08). Thus the applicant admits that plurality of components come together to make the support structure as taught by Musher.

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Page 13

b) Regarding applicant's argument that "Musher's composite support structure is made up of plurality of edible ...components" (Remarks, page 36) and "framework structure comprises one material... and not two ingredient materials" (Remarks, page 9, paragraph following Example V of 1/28/08). Further the applicant alleges that components, such as, baked dough constitute a single material and do not qualify as a two ingredient material. In response the applicant is reminded that a material, such as, baked dough, also comprises of ingredients including flour, water, salt or sugar or fats or oils and other flavors or additives, thus applicant's argument that none of the components in Musher's support structure are two ingredient materials is unsubstantiated and not persuasive.

c) Regarding applicant's argument that Musher's composite support structure is made up of components and not materials (Remarks, pages 36-37) a component is a constituent part; element; ingredient and a material is the substance or substances of which a thing is made or composed. Thus by definition all components are constituent parts or materials with which a thing is made, in the instant case a support for a frozen confection. Thus applicant's argument is not persuasive.

→ d) Regarding the argument that Musher's support is not non-frozen the applicant is reminded that the baked support and the flakes and nuts etc., as taught by Musher make the composite support structure, which comprises voids where the ice-cream mixture is poured and frozen. Applicant is further referred to page 4 of Musher, where Musher teaches molding of stick and other flake material into a support structure for the frozen confection and forming the structure and coating it. The formed and coated support structure of Musher is non-frozen prior to addition of liquid and freezing steps. Thus the composite support for a frozen confection as taught by Musher is not-frozen until the ice cream material is poured into the voids and the entire structure is frozen

→ iii) Applicant's remarks regarding Feybusch have been considered and are moot in view of new grounds of rejection.

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IV) Applicant's claim for new and unexpected results has been considered however applicant's remarks have materials and ingredients that have not been claimed as such and the applicant also claims of obtaining unique results by using commonly known and used components. Further the remarks offer no new data or experimentation that provides any evidence of the unexpected results. Thus applicant's remarks are not persuasive and claims 383-402 are rejected for reasons of record.

Thus applicant's remarks have been fully considered but have not been found persuasive and claims 383-402 have been rejected for reasons of record.



Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTI CHAWLA whose telephone number is (571) 272-8212. The examiner can normally be reached on 9:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Attachment C

Monday, March 16, 2009 7:26 PM

Alice Kiely 914 245-6661

p.19

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GAU 1794

Response to Advisory Action

18

Musher also does not show two ingredient materials that can serve to compose or make up his framework.

This limitation clearly distinguishes over Feybusch who shows only the single ingredient materials of usual pastry cone, molasses, hard crack peanut brittle, corn, and nut. He does not show two ingredient materials in any one of his materials.

Independent claim 394 first recites: "A support for a frozen comestible comprising an edible composite material, said edible composite material comprises two ingredient materials within said edible composite material or two constituent ingredient materials."

→ This limitation clearly distinguishes over Musher as Musher does not show a composite material. Musher's support stick comprises only one ingredient material, baked stick. His lollipop is also one ingredient material. His framework is largely voids or interstices in all his embodiments that are required to support his ice cream. His framework therefore has never been, or show a solid material or a composite material.

→ This limitation also clearly distinguishes over Feybusch as each of his materials comprise only one ingredient material of usual pastry cone, molasses, hard crack peanut brittle, corn, and nut, and therefore does not comprise a composite material. His cone also requires many interstices, or cracks in which to hold melted ice cream in all of his embodiments, having never been a solid material, and therefore and does not show a composite material.

Independent 405 recites: "A method of making a support for a frozen comestible comprising comprising an edible material comprising two ingredient materials within said edible material or two constituent ingredient materials in a support for a frozen comestible, wherein said two constituent materials comprise said edible material."

This limitation clearly distinguishes over Musher whose framework requires a great many